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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,435	03/25/2004	Naoki Torii	02-115	6963

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POSZ LAW GROUP, PLC  
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RESTON, VA 20191

EXAMINER

GRAHAM, GARY K

ART UNIT PAPER NUMBER

1744

DATE MAILED: 11/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/808,435

Applicant(s)

TORII ET AL.

Examiner

Gary K. Graham

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 20060912.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

The indicated allowability of claim 8 is withdrawn in view of the newly discovered reference(s) to Breesch (German patent 10057253). Rejections based on the newly cited reference follows.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7 and 11-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Smithers (US patent 3,088,155).

The patent to Smithers discloses the invention as is claimed, including a wiper blade having an elongated tiltable rubber (12), a pair of backing plates (14), a pair of holding levers (4,6) that hold the rubber and the plates and a flexible cover (10) that includes front and rear inclined surface walls which are connected to form a cap-shaped body. The surface walls are tilted to form a fin. The cover receives the holding levers and directly engages peripheral edges of the backing plates. The holding levers are considered to be at least partially within a base end opening of the cover. The cover also includes holding grooves (24) for the plates. A connecting clip (2) is connected to a wiper arm (7) and is connected to the holding lever (4). Connecting clip (2) is at least partially covered on a lateral surface by the cover.

With respect to claim 1, the cover is considered to have a “relatively” thin wall thickness, at least as far as defined. Note that the thickness has not been compared to any other structure thus such terminology does not define any particular thickness. Also, defining that the cover is flexibly deformable in response to flexing of the holding lever appears as functional. Such does not define any particular structure not disclosed by Smithers.

Claims 1-5, 7, 8 and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Breesch (German patent 10057253).

Note that the US patent application publication (US 2004/0010882) is the equivalent to the German patent. The patent to Breesch discloses the invention as is claimed (figs.1,5), including a wiper blade (10) having an elongated tiltable rubber (24), a pair of backing plates (42), a holding lever (32) that holds the rubber and the plates and a flexible, elastic cover (60) that includes front and rear inclined surface walls which are connected to form a cap-shaped body. The surface walls are tilted to form a fin with an offset ridge thereon. Such tilting increases from a longitudinal center of the front wall to each longitudinal end thereof (fig.3). The cover has a single, centered opening in the top thereof, receives the holding lever and directly engages peripheral edges of the backing plates. The holding lever is within a base end opening of the cover as claimed. The cover also includes holding grooves (92) for the plates. A connecting clip (48) is connected to a wiper arm (12) and is connected to the holding lever (32). Connecting clip (48) is at least partially covered by the cover.

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With respect to claim 1, the cover is considered to have a “relatively” thin wall thickness, at least as far as defined. Note that the thickness has not been compared to any other structure thus such terminology does not define any particular thickness. Also, defining that the cover is flexibly deformable in response to flexing of the holding lever appears as functional. Such does not define any particular structure not disclosed by Breesch.

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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Claim 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smithers (US patent 3,088,155).

The patent to Smithers discloses all of the above recited subject matter with the exception of a particular hardness for the cover.

While Smithers does not disclose a particular hardness for the cover, it appears such would be optimally discovered during routine experimentation. Smithers discloses that an appropriate hardness would be selected for the cover (col.2, lines 15+). To discover the optimal hardness does not appear inventive but merely that which is contemplated by Smithers. It would have been obvious to one of skill in the art to discover the optimum hardness for the material of the cover, including as claimed, by routine experimentation, lacking some criticality of such hardness. Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum range.

### ***Response to Arguments***

Applicant's arguments filed 12 September 2006 have been fully considered but they are not persuasive. Applicant argues that none of the holding levers of Smithers are arranged within a base opening of the cover. However, as set forth above, at least part of the holding levers (4,6) are provided within the base opening (fig.2). Additionally, as set forth above, the reference to Breesch discloses a holding lever (32) entirely within the base end opening of the cover (60).

Applicant's arguments with respect to new claims 13 and 14 have been considered but are moot in view of the new ground(s) of rejection.

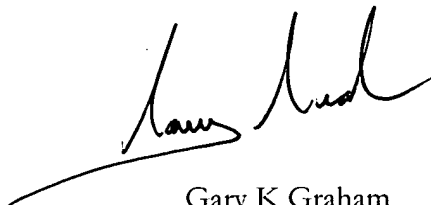
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*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K. Graham whose telephone number is 571-272-1274. The examiner can normally be reached on Tuesday to Friday (6:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys J. Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Gary K. Graham', is written over a horizontal line.

Gary K Graham  
Primary Examiner  
Art Unit 1744

GKG  
27 November 2006